IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Kanhiya Lal & Ors. Vs. State of Rajasthan & Anr.

S.B.CR.MISC. PETITION NO.162/2004

DATE OF ORDER :: April 04, 2007

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.Rajendra Charan, for the petitioners.
Mr.Sandeep Mehta, for respondent No.2.
Mr.Rameshwar Dave, P.P.

BY THE COURT:

By the instant criminal misc. petition under section 482 Cr.P.C., the petitioners have challenged the order dt. 18.9.2003 passed by the Additional Chief Judicial Magistrate, Begun, Distt. Chittoprgarh (for short `the trial court' hereinafter), whereby the trial court took the cognizance for the offences under sections 341, 323 and 149 I.P.C. and issued the process against the present petitioners.

I have heard learned counsel for the parties.

It is contended by the learned counsel for the petitioners that after investigation, the police has filed the negative final report. The trial court without considering the grounds mentioned in the negative final report and without there being any fresh material, took the cognizance of offence and, therefore, in view of the decision of Hon'ble Supreme Court in Suresh vs. Mahadevappa Shivappa Danannava & Anr., 2005 Cr.L.R. (SC) 295, the order of the trial court suffers from error and illegality.

Learned counsel for the complainant submits that from the material placed by the police along with the negative final report, prima facie offences are made out, however, does not dispute the proposition laid down by the Hon'ble Supreme Court in Suresh vs. Mahadevappa Shivappa Danannava & Anr. (supra), wherein the Hon'ble Supreme Court observed as under:

> "The Magistrate, in our opinion, has not considered the report filed by the police u/s. 156(3) Cr.P.C. judicially. Irrespective of the opinion of the police, the Magistrate may or may not take cognizance u/s. 190(1) of Cr.P.C."

Be that as it may, since in the instant case, from the perusal of the order impugned, it does not appear that the trial court has applied its mind to the material placed before it before taking

cognizance of the offences.

In Kishun Singh vs. State of Bihar, (1993) 2 SCC 16, the Hon'ble Supreme Court held that when the Magistrate takes notice of the accusations and applies his mind to the allegations made in the complaint or police report or information and on being satisfied that the allegations, if proved, would constitute an offence, decides to initiate judicial proceedings against the alleged offender, he is said to have taken cognizance of the offence. In this view of the matter, the order impugned deserves to be set aside and the matter deserves to be remanded to the trial court to pass a fresh order keeping in view the decision of the Hon'ble Supreme Court in Suresh vs. Mahadevappa Shivappa Danannava & Anr. (supra).

In the result, the criminal misc. petition is allowed. Order dt. 18.9.2003 is set aside and the matter is remanded to the trial court to pass a fresh order in accordance with law. Parties to appear before the trial court on 07.5.2007.

[H.R.PANWAR],J.

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